

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

IN RE ALTA MESA RESOURCES, INC.  
SECURITIES LITIGATION

Case No. 4:19-cv-00957

Judge George C. Hanks, Jr.

THIS DOCUMENT RELATES TO:

CASE NO. 4:22-CV-01189

CASE NO. 4:22-CV-02590

**APPENDIX TO DEFENDANTS' OPPOSITION TO  
DIRECT ACTION PLAINTIFFS' MOTION TO PARTIALLY EXCLUDE  
THE TESTIMONY OF CHARLES WHITEHEAD**

In accordance with Court Procedure 7(B)(3), Moving Defendants submit this Appendix in support of their Opposition to Direct Action Plaintiffs' Motion to Partially Exclude the Testimony of Charles Whitehead, which is filed concurrently herewith. Moving Defendants rely on the following evidence to support their motion:

Ex.	Description
1.	Excerpts of the Deposition of Charles Whitehead taken on November 17, 2023

Dated: January 19, 2024

Respectfully submitted,

By /s/ J. Christian Word

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**CERTIFICATE OF SERVICE**

I certify that on January 19, 2024, a true and correct copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

*/s/ J. Christian Word*

J. Christian Word

# EXHIBIT 1

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Page 1

1                   UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF TEXAS  
3                   HOUSTON DIVISION

4  
5                   -----  
6                   IN RE ALTA MESA RESOURCES,        )  
7    )      Case No.  
8                   INC. SECURITIES LITIGATION        )  
9                   -----)      4 :19-cv-00957

10                   \*\*\*\*\*  
11                   CONFIDENTIAL  
12                   \*\*\*\*\*  
13                   VIDEOTAPED DEPOSITION OF  
14                   CHARLES WHITEHEAD  
15                   November 17, 2023  
16                   9:12 a.m.  
17  
18                   Via Zoom Remote Conferencing  
19  
20  
21  
22  
23  
24  
25

Reported by: Marsi Koehl, CCR-B-2424

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Page 2

1	C O N T E N T S		
2	E X A M I N A T I O N		
3		Page	
4	Examination by Mr. Smith.....	6	
5	Examination by Mr. Peller.....	265	
6			
7	E X H I B I T S		
8	Exhibit No.	Description	Page
9			
10	Exhibit 0832	Expert Report of Professor Charles Whitehead	20
11	Exhibit 0833	15 U.S.C.A. Section 78t	129
12	Exhibit 0834	G.A. Thompson & Co. v. Partridge	138
13			
14			
15			
16			
17			
18			
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23			
24			
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CONFIDENTIAL

Page 3

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Page 270

1                   industry but like any industry you're going  
2                   to have some that perform and some that  
3                   don't perform as well. So I don't view this  
4                   as an industry, actually, neither does  
5                   Mr. Klausner. He -- his data breaks it out  
6                   this way, but he doesn't present it this  
7                   way. He's presenting it as a single SPAC.  
8                   In fact, I believe he ends up using  
9                   averages.

10                  But You have to dig into it to realize  
11                  that, in fact, his averages are reflecting  
12                  different types of sponsors. So, no, I  
13                  don't understand this to be anything other  
14                  than a single SPAC industry.

15                  BY MR. PELLER:

16                  Q. And then I think Trig may have gone into  
17                  this with you a little before, but you didn't look  
18                  into whether any of the SPACs listed in appendix D  
19                  have been, for example, investigated by the  
20                  Securities Exchange Commission, correct?

21                  MS. BLADOW: Objection.

22                  THE WITNESS: That's correct.

23                  BY MR. PELLER:

24                  Q. And you haven't looked into whether any of  
25                  the SPACs listed in appendix D have faced criminal

CONFIDENTIAL

Page 271

1       inquiries from the Department of Justice, correct?

2            MS. BLADOW: Objection.

3            THE WITNESS: That's correct.

4       BY MR. PELLER:

5            Q. Okay. So, for example, you include Nikola,  
6 right, in appendix D? It's number 59.

7            A. Yes.

8            Q. And was the CEO of Nikola convicted of  
9 criminal securities fraud?

10          A. I don't know.

11          Q. How can you include a population to derive  
12 industry custom and practice for disclosures, which  
13 is what I believe you're trying to do here, without  
14 determining whether certain members of that  
15 population actually violated disclosure laws?

16          A. So, again, we're providing custom and  
17 practice as to the disclosures that were actually  
18 made and the way in which they were presented. We're  
19 not speaking to any sort of inside information or  
20 outside the scope of the disclosure.

21            Whether or not the particular disclosures  
22 were, you know, in terms of inside information -- I  
23 think this is something we talked earlier about to  
24 Trig. Whether or not the inside disclosures were --  
25 whether there's inside information that speaks to the

CONFIDENTIAL

Page 272

1 way in which the disclosures were prepared.

2 Q. I guess I just don't understand the point or  
3 the usefulness of a survey of disclosure practices  
4 that doesn't take into account that some of the  
5 members of the population may have been violating  
6 disclosure laws. It's hard for me to square. It  
7 would be sort of like take ago survey of the speed at  
8 which people driving on a highway without excluding  
9 the people who are breaking the speed limit. I mean,  
10 I don't get it. Can you explain it?

11 A. Well, let's use your analogy. If I want to  
12 understand the speed at which people are driving on  
13 the highway, I want to understand the speed at which  
14 all the people are driving on the highway.

15 And so on that basis, I would assess without  
16 regard to speed limits, right, what the different --  
17 what the different speeds are in order to determine  
18 overall what we understand the speeds to be. In  
19 fact, I'm sure you know, there are studies that  
20 actually do this. And they find that average speeds  
21 are, in fact, above the speed limit.

22 I want to take a step back, though, to your  
23 other point though about disclosure issues. You  
24 know, you mentioned Nikola.

25 Are you representing that they -- the CEO

CONFIDENTIAL

Page 273

1 was found to have violated disclosures as it related  
2 to target projections? I'm not aware of anybody in  
3 this group has that type of problem. And so to that  
4 extent I don't know that any of the information in  
5 here is addressed by the different things you're  
6 describing, the criminal or the other proceedings.

7 Q. So it sounds like you did look into it?

8 A. No. I'm saying I'm not aware of.

9 Q. You're not aware of --

10 A. That's right.

11 Q. So if you were to become aware that there  
12 were companies in the sample that had violated laws  
13 with respect to financial projections, would that be  
14 relevant?

15 A. I'd want to understand again the context.  
16 Right? So if what you're telling me is -- first of  
17 all, it wouldn't be relevant to what we were doing in  
18 terms of this analysis. Right?

19 Again, in terms of this analysis we were  
20 looking at the actual disclosures made and the ways  
21 in which they were presented without regard to the  
22 underlying -- sort of the inside information we were  
23 describing this morning, whether or not in fact  
24 there's other information to suggest something  
25 different from what was presented in the proxy.

CONFIDENTIAL

Page 274

1           What you're suggesting to me is there might  
2    be publicly available inside information. Again,  
3    we're not -- I'm not aware of this. And as I  
4    mentioned this morning, I've not -- I've not seen  
5    anything that suggests one way or the other as to  
6    how this -- how the -- whether or not the disclosures  
7    are consistent in which the projections were  
8    presented.

9           But irrespective of what might be available,  
10   our -- our focus here were the disclosures themselves  
11   not the underlying process by which the disclosures  
12   may have been made.

13           Q. Okay. You know, obviously, there's been a  
14   lot of questions about this, so I don't want to beat  
15   a dead horse.

16           But what value is it to the factual issues  
17   and legal issues in this case as to what people do  
18   about disclosures if that's completely unmoored from  
19   whether that complied with the securities laws?

20           MS. BLADOW: Objection.

21   BY MR. PELLER:

22           Q. So a different way of saying it is, what  
23   relevance does it have if 82.7 percent of de-SPAC  
24   disclosures included financial projections if it's  
25   possible that those 82.7 percent violated the

CONFIDENTIAL

Page 275

1 securities laws?

2           A. So unless you're representing to me that  
3 82.7 percent violated the securities law, the point I  
4 made this morning was that one of the reasons we use  
5 a very large N, a large number of samples, is to --  
6 is to address the possibility of aberrations in a  
7 smaller group of samples.

8           And so we have 98 in this case. And within  
9 that 98, we have a significant number -- 84 percent  
10 of those who provide projections include target  
11 prepared projections as stated in the proxy  
12 statement.

13           Let's take your example. Let's assume that  
14 Nikola turned out not to be accurate. Well, that's  
15 not going to change my data very much. So the idea  
16 behind -- the idea behind using a large N, a large  
17 dataset, was to address the general custom and  
18 practice and not have it impacted by, in this case, a  
19 single aberration.

20           And so unless you're saying there's an  
21 industry-wide attempt, that still doesn't really go  
22 to -- attempt to mislead the public, that still  
23 doesn't go to, again, what it is we're doing in this  
24 particular empirical analysis. What we're doing here  
25 is looking at what's been provided and asking whether

CONFIDENTIAL

Page 276

1 or not what the company did is consistent with what's  
2 out there in the general public.

3 And that's all we're doing. Right? Again,  
4 we're not going to that additional step I said this  
5 morning to look at inside information to find out,  
6 you know, the nuance of what was behind the  
7 particular disclosures and the proxy. But we are  
8 trying to address that type of concern by having a  
9 large data set against which we're measuring custom  
10 and practice.

11 Q. You testified earlier that you worked in the  
12 SPAC industry?

13 A. I've been involved with SPACs. Yes.

14 Q. Involved in what manner?

15 A. So, for example, I'm currently de-SPACing.  
16 I'm working with a SPAC group to de-SPAC into,  
17 potentially, an agro-business.

18 Q. Okay. And are those positions listed on the  
19 CV that's attached to your expert report?

20 A. No. Because, again, we're in the process of  
21 doing this. I reference it in my -- in my discussion  
22 up front that I'm working on SPACs. But I'm doing it  
23 as me. It's not -- it's not -- I'm not employed by  
24 somebody. I'm doing it as -- as me, actually. I'm  
25 not working for an investment bank or a law firm.

CONFIDENTIAL

Page 282

1

CERTIFICATE

2

3 STATE OF GEORGIA:

4 COUNTY OF FULTON:

5

6 I hereby certify that the foregoing  
7 transcript was taken down, as stated in the caption,  
8 and the colloquies, questions, and answers were  
9 reduced to typewriting under my direction; that the  
10 transcript is a true and correct record of the  
11 evidence given upon said proceeding.

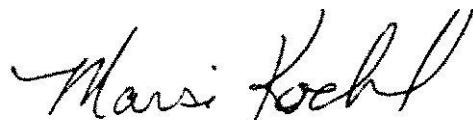
12 I further certify that I am not a relative  
13 or employee or attorney of any party, nor am I  
14 financially interested in the outcome of this action.

15 This the 22nd day of November, 2023.

16

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18



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20

Marsi Koehl, CCR-B-2424

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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF TEXAS  
 HOUSTON DIVISION

IN RE ALTA MESA RESOURCES, INC.  
 SECURITIES LITIGATION

Case No. 4:19-cv-00957

Judge George C. Hanks, Jr.

**Notice of Errata – Deposition of Charles Whitehead**  
**(November 17, 2023)**

I, the undersigned, do hereby declare that I have read the deposition transcript of Charles Whitehead dated November 17, 2023, and that, to the best of my knowledge, said testimony is true and accurate, with the exception of the following changes listed below:

Page	Line(s)	Change		Reason
		From	To	
Global		S4	S-4	Transcription Error
Global		F4	F-4	Transcription Error
11	12	I don't know how that were produced.	I don't know how they were produced.	Transcription Error
18	13	The principle condition	The principal condition	Transcription Error
29	11	industry, which tie into	industry, which ties into	Transcription Error
33	11	also observe.	also observe?	Transcription Error
48	11	in the variation figures.	in the various figures.	Transcription Error
62	19-20	whatever we're not coming across it	whatever reason we're not coming across it	Transcription Error
73	23-24	There were that many.	There were not that many.	Transcription Error

Page	Line(s)	Change		Reason
		From	To	
78	24-25	methodology – at least five.	methodology, perhaps it should have said at least five.	Transcription Error
90	10-11	but I don't that to be	but I don't understand that to be	Transcription Error
100	19	prepared financial projections used by SRI	prepared financial projections used by SRII	Transcription Error
109	5	do this as someone whose done his own	say this as someone who's done his own	Transcription Error
169	25	financial statements.	financial projections.	Transcription Error
196	5	reasonable rely upon advise	reasonably rely on advice	Transcription Error
203	7	I'd will reluctant	I'd be reluctant	Transcription Error
206	12	know that what's what was meant by opine	know that that's what was meant by opine	Transcription Error
208	22	they provide	they provided	Transcription Error
210	10	what the SRI folks	what the SRII folks	Transcription Error
215	3	don't recall the specific	don't recall the specifics	Transcription Error
226	24	inexperience	inexperienced	Transcription Error
228	5	a fuel review	a full review	Transcription Error
229	19	Mr. Waddell	Mr. Widell	Transcription Error

Page	Line(s)	Change		Reason
		From	To	
232	25	Mr. Waddell	Mr. Widell	Transcription Error
241	6	Mr. Waddell	Mr. Widell	Transcription Error
248	22	for prefaces of the CapEx	for purposes of the CapEx	Transcription Error
255	2	or he doing it	or he is doing it	Transcription Error
266	24-25	The Professor Badawi	Professor Badawi	Transcription Error
270	7	as a single SPAC.	as a single SPAC industry.	Transcription Error
277	19	all things I've done with trying	all things that I've done in connection with trying	Transcription Error
277	21	in the Europe	in Europe	Transcription Error

I declare under penalty of perjury that the foregoing is true and correct.

Date:

12/21/2023

Signed:

Clair